85-1435

NO.

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

REVEREND THEODORE R. LITTLE, JR.,
Petitioner,

v.

FIRST BAPTIST CHURCH, CRESTWOOD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

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5 cpies

QUESTION PRESENTED

Whether the actions of the trial court in issuing a temporary decree of injunction and a permanent decree of injuction without receiving any evidence or argument proffered by the petitioner, while refusing to schedule and hear any evidentiary matters, constituted a denial of due process?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

Reverend Theodore R. Little, Jr.,

Petitioner,

v.

First Baptist Church, Crestwood,

Respondent.

On Writ of Certiorari To the Supreme Court of Virginia

To the Honorable, the Chief Justice and Associate Justices of the United States.

Reverend Theodore R. Little, Jr., the petitioner herein, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia entered in the above-entitled case on November 22, 1985.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is unreported and is reproduced in Appendix A hereto, infra, page 1a.

STATEMENT OF JURISDICTION

The jurisdiction of the Court is invoked under 28 USC Section 1257 (3).

STATUTORY PROVISIONS INVOLVED

United States Constitution Fourteenth Amendment, Section 1: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws".

STATEMENT OF THE CASE

Petitioner is both Pastor and member of the First Baptist Church, Crestwood, which is a congregationalist Church located in Chesapeake, Virginia, and which is governed by the majority rule of its members. Petitioner was first employed by majority vote of the members on December 21, 1982. Petitioner was subsequently twice reappointed to his position by majority votes of the members, the last such vote having occured in February of 1984. Petitioner's original employment was in the form of a written contract for one year which stated "if the Church and the Pastor agree then this call is indifinite (sic)". See Appendix B hereto, infra, page 1b.

During 1984 a dispute arose within the church, and in November 1984, certain members acting in their individual capacity and without authority to bind or represent the church or the majority of its members filed a petition in the church's name seeking a temporary and permanent injunction from the Circuit Court of the City of Chesapeake to enjoin petitioner from "disrupting and taking over the church."

Petitioner timely filed his answer together with a Plea in Bar stating that he was the duly elected Pastor of the church and that the individuals petitioning in the church's name for an injunction against him were without authority to bring such an action on behalf of the church.

This matter originally came on for hearing on the Motion Docket of the Circuit Court of the City of Chesapeake on December 18, 1984, at 9:15 a.m. pursuant to respondent's petition for injunction and notice of same, and pursuant to petitioner's response to petition for injunction and petitioner's plea in bar. Presiding was Judge William H. Hodges. Present were Robert R. Carter, Esquire, (attorney for respondent), Reverend Theodore R. Little, Jr., (petitioner), Michael S. Weisberg, Esquire, (attorney for petitioner), and approximately 200 interested persons. No court reporter was present. (A written statement in lieu of transcript of these, and all other, proceedings in the Circuit Court,

signed by Judge William L. Forbes, is reproduced in Appendix C hereto, infra, page 1c).

The Court informed the parties that this matter had been placed upon its Motion Docket and there was, therefore, insufficient time to hear evidence in the case. Accordingly, no witnesses were sworn and the offering of no evidence was permitted by the Court. The Court entered an injunctive order, over petitioner's objection, enjoining the petitioner from going upon the property of the First Baptist Church, Crestwood, or interfering in Church affairs, for a period of sixty days. The Court also, despite petitioner's objection, entered a decree of reference appointing James A. Overton Commissioner and directing him to

conduct a vote of the membership of the First Baptist Church, Crestwood on January 6, 1985, for the purpose of determining if the services of the Reverend Theodore R. Little, Jr. should be terminated as Pastor of the Church.

Commissioner Overton conducted an election at the Church on January 6, 1985, as ordered by the Court, and rendered his report thereof to the Court on January 9, 1985. On January 17, 1985, petitioner, by counsel, timely filed Exceptions to the Commissioner's Report on several grounds, including the grounds that the Decree of Reference requiring said meeting was too narrowly drafted in that it limited the Commissioner's scope of inquiry solely to the conducting of a vote and was issued

without due process as it was entered without petitioner having been afforded his day in court to be heard on his Plea in Bar to the original petition for temporary injunction. (For purposes of Rule 21 (h) of this court, this was the first raising of a federal question by petitioner). Petitioner prayed that the recommendations of the Commissioner in Chancery be overruled, that the Decree of Reference be vacated, and that the case be reinstated upon the docket of the Court for a plenary evidentiary hearing relative to the petitioner's response, plea in bar, and on the merits of the case.

On respondent's notice and motion for entry of a permanent injunction order overruling petitioner's exceptions to the Commissioner's

report and petitioner's prayer for a plenary hearing, a hearing was scheduled on the Court's Motion Docket for January 30, 1985, at 12:15 p.m., in the Circuit Court of the City of Chesapeake, before Judge William L. Forbes. Present were Robert A. Carter, Esquire (attorney for respondent), Reverend Theodore Little, Jr.. (petitioner), and Michael S. Weisberg, Esquire, (attorney for petitioner). No court reporter was present.

The Court overruled petitioner's exceptions to the Commissioner's report and denied petitioner's prayer for a plenary hearing. No witnesses were sworn and the offering of no evidence of any kind was permitted by the Court. The Court entered a permanent decree of injunction

enjoining Reverend Theodore Little, Jr., from going onto the property of the First Baptist Church, Crestwood, and interfering in the affairs of the Church.

Petitioner timely filed an appeal to the Supreme Court of Virginia seeking review of the federal question whether petitioner had been denied due process under the fourteenth amendment to the Constitution of the United States, requesting said Court to reverse the decree of injunction of the Circuit Court of the City of Chesapeake and requesting that this case be remanded to the Circuit Court for a proper trial and hearing. The Supreme Court of Virginia refused petitioner's appeal on November 22, 1985.

REASONS FOR GRANTING THE WRIT

I.

THE TRIAL COURT ERRED IN DENYING THE PETITIONER THE OPPORTUNITY TO PRESENT ANY EVIDENCE IN SUPPORT OF HIS RESPONSE TO PETITION FOR INJUNCTION AND HIS PLEA IN BAR.

The right of a defendant to a hearing in a civil trial, and the legal duty of the Court to afford a defendant such a hearing, are guaranteed by the due process clause of the Fourteenth Amendment to the Constitution of the United States and by the due process clause of Article I, Section 11 of the Constitution of Virginia.

Mr. Justice Harlan, in delivering the opinion of this court in Boddie v. Connecticut, 401 U.S. 371 (1970), summarized this subject as follows:

"Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. Early in our jurisprudence, this Court voiced the doctrine that "[w]herever one is assailed in his person or his property, there he may defend," Windsor v. McVeigh, 93 U.S. 274, 277 (1876). See Baldwin v. Hale, 1 Wall. 223 (1864); Hovey v. Elliott, 167 U.S. 409 (1897). The theme that "due process of law signifies a right to be heard in one's defence," Hovey v. Elliott, supra, at 417, has continually recurred in the years since Baldwin, Windsor, and Hovey. [See Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Armstrong v. Manzo, 380 U.S. 545 (1965); Schroeder v. New York, 371 U.S. 208, 212 (1962); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 338 (1963); Covey v. Town of Somers, 351 U.S. 141 (1956); Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950); Anderson Nat. Bank v. Luckett, 321 U.S. 233, 246 (1944); Opp Cotton Mills v. Administrator, 312 U.S. 126, 152-153 (1941); Morgan v. United States, 304 U.S. 1 (1938); United States v. Illinois Central

R. Co., 291 U.S. 457, 463 (1934); Brinkerhoff-Faris Trust & Savings Co. v. Hill, 281 U.S. 673 (1930); Coe v. Armour Fertilizer Works, 237 U.S. 413, 423 (1915); Londoner v. Denver, 210 U.S. 373, 385-386 (1908); Louisville & Nashville R. Co. v. Schmidt, 177 U.S. 230, 236 (1900)]. Although "[m]any controversies have raged about the cryptic and abstract words of the Due Process Clause," as Mr. Justice Jackson wrote for the Court in Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1950), "there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case." Id., at 313. Due process does not, of course, require that the defendant in every civil case actually have a hearing on the merits. A State, can, for example, enter a default judgment against a defendant who, after adequate notice, fails to make a timely appearance, see Windsor, supra, at 278, or who, without justifiable excuse, violates a procedural rule requiring the production of evidence necessary for orderly adjudication, Hammond Packing Co. v. Arkansas, 212 U.S. 322, 351 (1909). What the Constitution does require is "an opportunity granted at a meaningful time and in a meaningful manner," Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (emphasis added), "for [a] hearing

appropriate to the nature of the case," Mullane v. Central Hanover Tr. Co., supra, at 313. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings. [Compare Goldberg v. Kelly, supra, with In re Winship, 397 U.S. 358 (1970). See also Bowles v. Willingham, 321 U.S. 503, 520-521 (1944)]. That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, [Goldberg v. Kelly, supra, Sniadach v. Family Finance Corp., supra; Opp Cotton Mills v. Administrator, supra, at 152-153; United States v. Illinois Central R. Co., supra, at 463; Coe v. Armour Fertilizer Works, supra] except for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event. [Cafeteria & Restaurant Workers Union v. McElroy 367 U.S. 886 (1961); Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950); Fahey v. Mallonee, 332 U.S. 245 (1947); Bowles v. Willingham, supra; Yakus v. United States, 321 U.S. 414 (1944)]. In short, "within the limits of practicability," id., at 318, a State must afford to all

> individuals a meaningful opportunity to be heard if it is to fulfill the promise of the Due Process Clause." Id. at 377.

The right under the due process clause to a full hearing includes the right of the party whose rights are sought to be affected to introduce evidence and to have judicial findings based upon it. Baltimore and O.R. Co. v. United States, 298 U.S. 349 (1935); Louisville and N.R. Co. v. Finn, 235 U.S. 601 (1914); Washington ex rel Oregon R.& N. Co. v. Fairchild, 224 U.S. 510 (1911).

The right to confront and cross examine witnesses is a fundamental aspect of procedural due process. Wolff v. McDonnell, 418 U.S. 539 (1973); Jenkins v. McKeithen, 395 U.S. 411 (1968); Willner v. Committee on Character and Fitness, 373 U.S. 96 (1962)and such right applies not only

in criminal proceedings, but also in noncriminal proceedings. (See 81 Am. Jur. 2d Witnesses Sec. 464)

The right has been extended by this court to include administrative and quasi-judicial proceedings. (See 2 Am. Jur. 2d Admin. Law Sec. 424).

In Reverend Little's case there was no countervailing state interest of overriding significance requiring that his right to a hearing be denied; there was no failure to appear or failure to proffer evidence in accordance with procedural rules by Reverend Little; there was no waiver of his right to a hearing by Reverend Little; there was no extraordinary situation where some valid governmental interest was at stake that justified postponing Reverend Little's hearing until after a certain

event; neither was this an administrative or quasi-judicial procedure wherein Reverend Little's rights might conceivably have been conformed to some lesser standard of due process.

Reverend Little's right to a hearing was denied him in a duly constituted State court of this land for no apparent reason save the convenience of the court. This denial persisted from the beginning to the end of this proceeding, and as a result Reverend Little was deprived of his religious and property rights without ever having had an evidentiary hearing of any kind. For this reason this court should remand this case to the Circuit Court of Chesapeake for a

trial in accordance with constitutionally guaranteed minimal standards of due process.

II.

THE SUBMISSION OF PETITIONER"S CONTRACTUAL PROPERTY RIGHTS TO A VOTE AT THE CHURCH DID NOT CONSTITUTE DUE PROCESS OF LAW.

The procedure whereby the Circuit Court abrogated Reverend Little's employment contract and deprived him of his property rights, cannot be considered to constitute due process within the meaning of the Fourteenth Amendment. Instead of being afforded his day in Court, with all of the rights and safeguards to which he was entitled under the Common Law and the Constitution of the United States, Reverend Little was subjected to an

extra-judicial determination of his rights, which included his property rights (termination of employment and pay), his civil rights, and his freedom to practice his religion, all without due process of law.

What happened to Reverend Little is analogous to the executive of a Corporation who signs a contract of employment with the Corporation and then has his contract abrogated by a vote of the stockholders at an extraordinary meeting, without due notice, in which the very question of which persons should qualify as stockholders entitled to vote is in dispute.

The original Petition for Injunction filed with the Chesapeake Circuit Court by the respondent herein referred to Reverend Little's written

contract of employment and attached a copy thereof. The petition then alleged "insubordination" on the part of Reverend Little, alleged a termination of Reverend Little's contract, and a refusal on the part of Reverend Little to "terminate his services".

Reverend Little, in his Plea in Bar and in his Response to Petition for Injunction responded that he was employed through a majority vote of the members of the association, challenged the actions of the respondents herein as being without authority of the association, and denied that he had received duly authorized notice of termination of his employment contract.

Thus, in the first instance, the Circuit Court of Chesapeake had before it a civil contract dispute--

specifically, a dispute over an employment contract involving property rights in the form of salary owed and owing.

Instead of addressing the contract question on its merits, instead of inquiring as to the terms of the contract, instead of hearing testimony concerning alleged breaches of the contract, instead of eliciting evidence as to the procedural requirements and conditions for terminating the contract, the court abdicated its judicial responsibility and referred the contractual dispute to a vote. Compounding this error, the court, in its Decree of Reference, unlawfully imposed membership qualifications, voting requirements and election procedures upon the church which were

in contravention and conflict with church policies and religious beliefs on which those policies are based.

Thus, not only did the Chesapeake Circuit Court deprive Reverend Little of his civil rights and property without due process, it also unlawfully interfered in ecclesiastical affairs which are outside the jurisdiction of a civil court.

Why the Chesapeake Circuit Court acted in this way is not clear. The court never gave any reason for its Injunctive Order or its Decree of Reference. Nevertheless, assuming that the court intended to be mindful of this court's guidelines in the matter of the jurisdiction of civil courts to deal with religious organizations, and more specifically with disputes arising within such organizations, and more

specifically still with contract and property disputes involving religious organizations, the Chesapeake Circuit Court did not follow rulings presently mandated by this court, nor practices generally followed by other courts.

This Court has found no violation of the establishment clause of the First Amendment of the Constitution in the use of civil courts by religious organizations to decide disputes, particularly disputes as to civil, contract and property rights. Jones v. Wolf, 443 U.S. 595 (1979); Watson v. Jones, 13 Wall. 679 (1872). This Court has only asserted a want of jurisdiction to hear and determine any controversy relating to the purely ecclesiastical or spiritual features of

a church or religious society. Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1975).

The guiding principle in the settling of church contract and property disputes is that "no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith "be involved". Maryland and Va. Churches v. Sharpsburg Church, 396 U.S. 367 at 368 (1970). The courts must apply "[n]eutral principles of law, developed for use in all property disputes." Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 at 449 (1969). This "neutral principles of law" approach was cited with approval in Jones v. Wolf, supra,

which is today the foremost decision of this Court in this area of law. 443 U.S. 602-606.

Thus it has been held that civil courts have jurisdiction to protect churches, third parties and church members against an invasion of their contract rights. United Methodist Council v. Superior Court, 439 U.S. 1369 (1978); Thomas v. Lewis, 224 Ky 307, 6 S.W. 2d 255 (1928); Gipe v. Superior Court of Orange County, 124 Cal. App. 3d 617, 177 Cal. Rptr 590 (1981).

In ruling upon the purely contractual aspect of a minister's employment, courts have held that a minister employed for a given time cannot be arbitrarily discharged, since there is no legal distinction between a contract with a minister and his

congregation and other civil contracts for personal services. Congregation of Children of Israel v. Peres, 42 Tenn. (2 Coldw.) 620 (1865). Courts have found that a contract between a minister and his church, like any other civil contract, is entitled to the protection of the civil courts and they have refused to abide by the decision of an ecclesiastical body, upon the ground that it involved a breach of contract, Avery v. Tyringham, 3 Mass 160 (1807); and they have enquired into the organic rules and forms of procedure prescribed by the ecclesiastical body to see if they have been followed in dissolving a pastoral relation which involves a property right. LeBlanc v. Davis, 432 So. 2d 239 (1983, La.); Bennett v. Belton, 436 S.W. 2d 161, writ ref'd n.r.e., 442

S.W. 2d 679 (1969, Tex.); Wallace v. United Presbyterian Church, 194 Pa. 178, 45 A. 84 (1899).

In Waters v. Hargest, 593 S.W. 2d 364 (1979, Tex. Civ. App.), a case involving a dispute in a congregational church regarding whether a pastor would remain or be dismissed, a case directly in point with the present case, the Court of Civil Appeals of Texas took the position which the Chesapeake Circuit Court should have taken in this case.

In Waters the plaintiffs petitioned the court for an order compelling the calling of a congregational meeting of the entire membership of the church to determine whether the pastor should remain in that office. The defendants, who included the deacons and the pastor

alleged that there existed a valid and enforceable contract of employment between the church and the pastor which the plaintiffs were threatening to violate.

The trial court appointed a moderator to preside over a special meeting to be held by the congregation, and by a one vote majority of the members present at the meeting the pulpit of the church was declared vacated. The trial court then dismissed the case on the grounds that it involved "internal affairs" of the church and "only matters of an ecclesiastical nature." 593 S.W. 2d at 365.

On appeal to the Court of Civil Appeals of Texas, the dismissal by the trial court was reversed and the case was remanded for trial. In reaching

this decision, the Court of Civil Appeals spoke the following language which, except for the name of the pastor and the church, is directly applicable to the present case:

> "The court should not have dismissed the suit. The first amendment to the United States Constitution prohibits the civil courts from exercising jurisdiction over purely ecclesiastical matters involved in church related disputes, but it does not forbid those courts from adjudicating property rights of the church or of the members, so long as such rights can be determined by the application of neutral principles of law developed for use in all property disputes and which can be applied without "establishing" a church. Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed. 2d 775 (1979); Presbyterian Church v. Hull Church 393 U.S. 440, 89 S.Ct. 601, 2. L.Ed. 2d 658 (1969); Presbytery of the Covenant v. First Presbyterian Church of Paris, 552 S.W. 2d 865 (Tex. Civ. App. Texarkana 1977, no writ); Gray v. Saint Matthews Cathedral EndowmentFund, 544 S.W. 2d 488, 97 A.L.R. 3d 1197 (Tex. Civ. App. Texarkana 1976, writ ref'd n.r.e.).

Contractual rights are "property rights" within the meaning of the rule. Just as a church can contract with persons outside the church membership, it can contract with its own pastor, and so long as the determination of the parties' rights can be accomplished by the application of neutral principles of law without the necessity of adjudicating matters of church doctrine or determining matters of church government in a hierarchical church, the civil courts should not hesitate to take jurisdiction and adjudicate the controversy. See for example Mayhew v. Vanway, 371 S.W. 2d 90 (Tex. Civ. App. Houston 1963, no writ). It is undisputed here that the Zion Hill Baptist Church is a congregational church, being completely autonomous and governed by majority rule. There being no hierarchical constitution or regulations governing the right of the church to contract, and no church adjudicatories having jurisdiction to determine questions concerning such contracts, the controversy regarding Rev. Jones' alleged contract can be determined solely by the application of neutral principles of law." 593 S.W. 2d at 365.

For these same reasons, Reverend Little's contract rights should have been subjected to neutral principles of law, in a court of law, and it was a denial of due process to subject his rights to a nonjudicial dispute-resolution procedure. Reverend Little's case should be remanded to the Circuit Court of Chesapeake for a trial because:

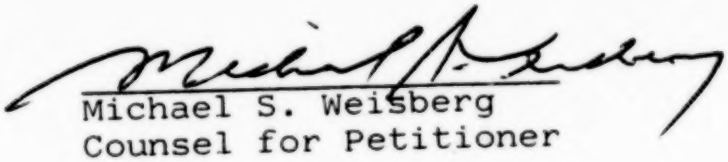
(a) He was totally denied a hearing or an opportunity for a hearing consistent with due process; and

(b) The nonjudicial procedure to which his rights were subjected is not a constitutionally permissible substitute for due process.

CONCLUSION

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,



Michael S. Weisberg
Counsel for Petitioner

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Post Office Box 3647
Norfolk, Virginia 23514

(UNPUBLISHED)

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 22nd day of November, 1985.

Reverend Theodore R. Little, Jr.,

Appellant,

against Record No. 850313
Circuit Court No. 22207

First Baptist Church, Crestwood,

Appellee.

From the Circuit Court of the City of Chesapeake

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition of appeal.

A Copy,

Teste:

David B. Beach, Clerk

By: s/ Debra A. Roman
Deputy Clerk

First Baptist Church, Crestwood

4701 Bainsbridge Boulevard

Chesapeake, Virginia 23320

January 7, 1983

Rev. Theodore R. Little, Jr.
2413 Dunbarten Drive
Chesapeake, Virginia 23325

Dear Rev. Little,

After much Prayer and being guided by the Holy Spirit, the First Baptist Church, Crestwood, in a call conference on December 21, 1982, overwhelmingly voted to elect you Pastor of our church.

Please make our hearts glad and accept our challenge. We will strive to work with you in every way, because we believe that you will be good for us.

The terms we extend to your are as follows:

Fifteen Thousand ($15,000.00) dollars per year.

Twelve Hundred ($1,200.00) dollars traveling expenses per year.

[One Hundred ($100.00) dollars Spring Revival.] deleted

[One Hundred ($100.00) dollars Fall Revival] deleted

One Hundred Fifty ($150.00) dollars Ministers Conference, Hampton.

[All Installation Service money, after expenses.] deleted

Two (2) weeks vacation, with pay, for the first and second years, and four (4) weeks there after.

Sick leave pay up to ninty (90) days.

Pulpit absence for personal business, is the duty of the Pastor to secure and pay a guest minister.

This call is for one year and if the Church and Pastor agree, then this call is indifinite.

Ninty (90) days notice for church and Pastor if any disagreement arises.

If the above terms are satisfactory and you decide to accept our call, please sign one sheet and return it to us along with your acceptance.

By order of the Church,

s/ Chairman of Deacon Board
Chairman of Deacon Board

s/ Chairman of Trustee Board
Chairman of Trustee Board

s/ Church Clerk
Church Clerk

1/12/83

This will acknowledge acceptance of all of the above except as indicated by the word "deleted."

s/ Theodore R. Little, Jr.
Theodore R. Little, Jr. Jan. 12, 1983
Signature

(UNPUBLISHED)

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

FIRST BAPTIST CHURCH, CRESTWOOD

Complainant,

v. IN CHANCERY NO. 22207

REVEREND THEODORE R. LITTLE, JR.,

Respondent.

RULE 5:9 WRITTEN STATEMENT

Pursuant to Rule 5:9 (c) of the Rules of the Supreme Court of Virginia, the following written statement of the incidents of this case, in lieu of a transcript, shall become a part of the record on appeal:

1. This matter originally came on for hearing on the Motion Docket of the Circuit Court of the City of Chesapeake on December 18, 1984, at 9:15 A.M., pursuant to complainant's petition for injunction and notice of same, and pursuant to respondent's response to

petition for injunction and respondent's plea in bar. Presiding was Judge William H. Hodges. Present were Robert R. Carter, Esquire, attorney for complainant, Reverend Theodore R. Little, Jr., respondent, Michael S. Weisberg, Esquire, attorney for respondent, and approximately 200 interested persons. No court reporter was present.

2. The Court informed the parties that this matter had been placed upon its Motion Docket and there was, therefore, insufficient time to hear evidence in the case. Accordingly, no witnesses were sworn and the offering of no evidence was permitted by the Court. The Court entered an injuctive order enjoining the respondent from going upon the property of the First Baptist Church, Crestwood, or

interfering in Church affairs, for a period of sixty days. The Court also entered a decree of reference appointing James A. Overton Commissioner and directing him to conduct a vote of the membership of the First Baptist Church, Crestwood on January 6, 1985, for the purpose of determining if the services of the Reverend Theodore R. Little, Jr. should be terminated as Pastor of the Church.

3. Commissioner Overton conducted an election at the Church on January 6, 1985, as ordered by the Court, and rendered his report thereof to the Court on January 6, 1985. On January 17, 1985, respondent, by counsel, filed Exceptions to the Report of the Commissioner in which the respondent prayed that the recommendations of the Commissioner in Chancery be overruled,

that the Decree of Reference be vacated, and that the case be reinstated upon the docket of the Court for a plenary evidentiary hearing relative to the respondent's plea in bar and other responsive pleadings which are a part of the record in this case.

4. On complainant's notice and motion for entry of a permanent injunction order overruling respondent's exceptions to the Commissioner's report and respondent's prayer for a plenary hearing, a hearing was held as scheduled on the Court's Motion Docket on January 30, 1985, at 12:15 P.M., in the Circuit Court of the City of Chesapeake, before Judge William L. Forbes. Present were Robert A. Carter, Esquire, attorney for complainant, Reverend Theodore R.

Little, Jr., respondent, and Michael S. Weisberg, Esquire, attorney for respondent. No court reporter was present.

5. The Court overruled respondent's exceptions to the Commissioner's report and denied respondent's prayer for a plenary hearing. No witnesses were sworn and the offering of no evidence of any kind was permitted by the Court. The Court entered a permanent decree of injunction enjoining the Reverend Theordore R. Little, Jr., from going onto the property of the First Baptist Church, Crestwood and interfering in the affairs of the Church.

Entered: 3/15/85

s/ William L. Forbes
Judge

I ask for this:

s/ Michael S. Weisberg p.d
Michael S. Weisberg

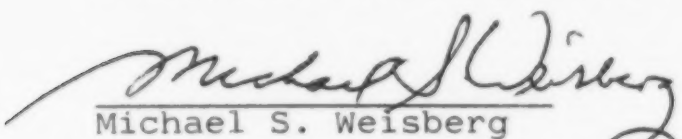
Seen and (approved) (excepted) to:

(Not Present s/WLF) p.q.
Robert R. Carter

CERTIFICATE

In accordance with Rule 21 of the Rules of the Supreme Court of the United States, I hereby certify that I have this 18th day of February, 1986 mailed the required copies of the Petition for Certiorari to the Clerk's Office of the Supreme Court of the United States for the purpose of filing on February 18th, 1986, and have also mailed the required copies of the above mentioned documents to all attorneys of record as follows:

Steven K. Whitaker
WHITAKER AND SARGENT
1200B Sparrow Road
Chesapeake, VA 23325-3095



Michael S. Weisberg
Weisberg and Stein, P.C.
Post Office Box 3647
Norfolk, VA 23514

Taken, subscribed and sworn to before me this 13th day of February, 1986.

My commission expires

1-31-89.

Karen E. Fenda

NOTARY PUBLIC

(2)

NO. 85-1435

Supreme Court, U.S.
FILED
MAR 20 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

REVEREND R. THEODORE LITTLE, JR.,
PETITIONER,

v.

FIRST BAPTIST CHURCH, CRESTWOOD,
RESPONDENT.

ON WRIT OF CERTIORARI FROM
THE SUPREME COURT OF VIRGINIA

BRIEF IN OPPOSITION

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3/4/86

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14. Willis v. Davis, 323 S.W.2d 847 (Ky. 1959).....10

STATEMENT OF THE CASE

Respondent provides the following to clarify and to supplement Petitioner's Statement of the Case:

1. Respondent's members who filed the petition for a temporary injunction were acting in their official capacities on behalf of the Respondent with full authority.
2. The Petitioner had no property rights in or to his position as pastor.
3. The Petitioner was discharged by a clear majority of Respondent's members at a duly called meeting after proper notice.

SUMMARY OF THE ARGUMENT

The following summarizes the Argument of the Respondent:

1. A significant, valid and overriding governmental interest required the trial court to deny the Petitioner a hearing on his termination.
2. The dispute between Reverend Little and

the Church was based on a contractual claim involving only matters of church discipline and internal ecclesiastical decisions; therefore, judicial review on the merits is clearly barred by the First Amendment to the United States Constitution which prohibits government interference in ecclesiastical matters.

3. Because the dispute was based solely on ecclesiastical matters, the Chesapeake Circuit Court was limited to determining only whether the majority voted to remove the pastor at a duly called and fairly conducted meeting of the congregation.

4. The appointment of a special commissioner to "run and oversee" the congregational meeting to insure a fair and impartial meeting and the order of a permanent injunction to enforce the will of the majority of the Church did not violate the First Amendment.

5. Petitioner's inability to introduce evidence at the injunction hearing was a harmless error, if any, since three criminal warrants had already been served on the Petitioner precluding the Petitioner from going onto Respondent's property.

6. In becoming a member of the First Baptist Church, Reverend Little voluntarily submitted to be bound by the decisions of the Church; therefore, he has no recourse for review concerning the reasons for his termination.

ARGUMENT

I.

A SIGNIFICANT, VALID AND OVERRIDING GOVERNMENTAL INTEREST REQUIRED THE TRIAL COURT TO DENY THE PETITIONER A HEARING.

Petitioner admits that his entitlement to a hearing was conditioned on the absence of an overriding governmental interest. Although

Petitioner contends no such interest existed, it is clear that such an interest did exist, namely the government's interest in respecting the First Amendment to the Constitution of the United States. To have granted the Petitioner a hearing as he requested would have amounted to the State determining who the pastor of the Church should be and when, where, what and how worship services should be conducted. A congregation's determination as to who shall preach from the church pulpit is at the very heart of free exercise of religion. Simpson v. Wells Lamount Corporation, 494 F.2d 490 (1974).

In Simpson, supra, the Court dismissed an action against church defendants by the pastor who claimed that his removal as pastor and subsequent eviction of his family from the church parsonage violated his civil rights and the First, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of

the United States. The Court held that the application of the Civil Rights Act provisions would have resulted in a prohibited encroachment by the state into the area of religious freedom. The trial court had to balance the entitlement of the defendant to a hearing against the right of a religious organization to conduct its affairs free of civil court scrutiny or intrusion guaranteed by the First Amendment. The balance favors the religious organization.

II.

THE TRIAL COURT PROPERLY FOLLOWED THE "NEUTRAL PRINCIPLES APPROACH" IN DENYING PETITIONER'S REQUEST FOR A HEARING.

The neutral principles approach does not permit judicial review of contractual claims which involve matters of doctrine, discipline, faith, or internal organization. In Jones v. Wolf, 443 U.S. 595, 99 S.Ct. 3020 (1979) the "neutral principles approach" was recognized

as the basic guideline to be followed in resolving disputes within a church. In using this approach civil courts must examine documents in purely secular terms and if the interpretation of such instruments would require the court to resolve a religious controversy then the court must defer to the resolution of the doctrinal issue by the authoritative body. Ibid., at 3026.

Several of the cases cited by Petitioner can be distinguished: United Methodist Council v. Superior Court, 439 U.S. 1369 (1978) involves the operation of retirement homes by the Church and was subject to jurisdiction because the Church was "doing business" in the state; Gipe v. Superior Court of Orange County, 124 Cal.App.3d 617, 177 Cal.Rptr. 590 (1981) asks whether a statute authorizing a labor commissioner to represent an indigent claimant in de novo proceedings, as applied to a discharged minister seeking to

recover severance pay allegedly promised him by the church, violates the First Amendment; and Thomas v. Lewis, 224 Ky. 307, 6 S.W.2d 255 (1928) involves two warring factions of a church and their rights to use the church property as determined by church constitutional provisions.

The Petitioner contends that the trial court ignored the neutral principles approach by denying the Petitioner an opportunity to present evidence at the injunction hearing. This is not so. The trial court followed the neutral principles approach. It separated the secular issues from the religious issues. It declined to receive evidence on the religious issues (who should be the Church's Pastor, and on what the internal workings of the Church were). It did receive evidence on the issue of whether Reverend Little was wrongfully discharged by referring the issue to Commissioner Overton. Thus, the trial court

took the least restrictive alternative.

In Nunn v. Black, 506 F.Supp. 444 (1981), dissident church members brought a civil rights action alleging that they were unlawfully expelled from church membership at a congregational meeting and that they were arrested for trespass on church property after having been warned to stay off. The Court stated:

> . . .Finally, it is clear that the fact that the local church may have departed arbitrarily from its established expulsion procedures in removing the plaintiffs is of no constitutional consequence, whether one appeals the First, Fifth, or Fourteenth Amendments. Serbian Orthodox Diocese v. Milivojecvich, 426 U.S. 696, 714, 96 S.Ct. 2372, 2382, 49 L.Ed.2d 151 (1976). It is the very nature of religious matters that ecclesiastical decisions are accepted as articles of faith, as opposed to the rational, objective mode of analysis and procedure used in secular decision-making. Therefore, in the present case constitutional concepts of due process, involving secular notions of "fundamental fairness" or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical

cognizance.... Nunn v. Black, supra, at 448.

The Court in Nunn concluded that "the plaintiffs enjoyed no right to continued Church membership that was protected by Federal law or the Constitution." Ibid., at 447.

It is submitted that the Petitioner is confusing his privilege to preach at a particular church with his entitlement to a hearing on his discharge. Reverend Little had no right to preach and the trial court had no right to select the Pastor of the Church. LeBlanc v. Davis, 432 So.2d 239 (La. 1983); Hemphill v. Zion Hope Primitive Baptist Church, 447 So.2d 976 (Fla.App.1 Dist. 1984). Petitioner had a right to be heard on his alleged wrongful termination and he was when Commissioner Overton received evidence and made findings.

In Graham v. Lockhart, 256 S.E.2d 518 (N.C. 1979) the Court held that in determining

whether a pastor of a congregational church was properly removed as pastor the court was limited to determining whether the majority voted to remove the pastor; whether the meeting was properly called and conducted, and whether the pastor was properly enjoined, permanently, from acting as pastor of the church.

In order to insure that congregational meetings and elections are conducted in a fair and impartial manner, courts have frequently appointed a special commissioner to run and oversee them. Willis v. Davis, 323 S.W.2d 847 (Ky. 1959); Smith v. Lewis, 578 S.W.2d 169 (Tex. 1979); Waters v. Hargest, supra; Reid v. Gholson, supra.

III.

PETITIONER'S INABILITY TO INTRODUCE EVIDENCE AT THE INJUNCTION HEARING WAS A HARMLESS ERROR, IF ANY, SINCE THREE CRIMINAL TRESPASS WARRANTS HAD ALREADY BEEN SERVED ON THE PETITIONER.

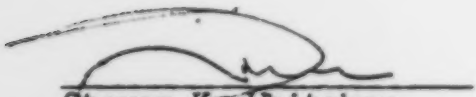
Assuming Petitioner was wrongfully denied a hearing, such a wrong amounted only to a harmless error. Petitioner voluntarily submitted himself to be bound by the decisions of the Church. The Church held a valid meeting and the Petitioner received actual notice of the meeting. Petitioner voluntarily chose to ignore the meeting, to ignore the Church's decision and to ignore the Church's notice to him to stop coming onto Church property. Petitioner placed himself above the rules of his Church. Petitioner had unclean hands in a court of equity. (See Appendix 1a thru 1h for letters). He was subsequently charged with three separate counts of criminal

trespass. Issuance and service of the warrants was made on the Petitioner. A specific condition of the Petitioner's release on bond was that he not go onto the Church property. (See Appendix 1i). Thus the injunction precluding the Petitioner from going onto the Church property simply re-affirmed the conditions of his bond.

CONCLUSION

For the foregoing reasons the judgment and order appealed from should be affirmed with costs.

Respectfully submitted,



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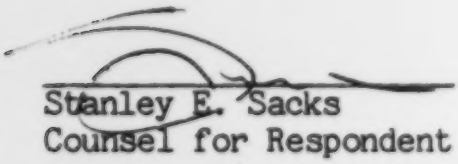

Stanley E. Sacks
Counsel for Respondent

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P.O. Box 3291
Norfolk, VA 23514

APPENDIX

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr., Pastor
Office Telephone 545-2602

October 26, 1984

The Reverend Theodore R. Little, Jr.
2413 Dunbarton Drive
Chesapeake, Virginia 23325

Dear Reverend Little:

Because of our inability to get you to sit with members of this church to resolve our grievances, we are requesting a meeting with you. We have tried numerous times to meet with you for redress to no avail. You have adjourned meetings, you have denied the official boards the opportunity to meet jointly. You have walked out of meetings.

For the well-being of the spiritual life of First Baptist Church Crestwood, we request that you meet with the congregation on Friday, November 16, 1984 at 8:00 P.M. We urge you not to disregard this request to meet. Again we repeat, the well-being of the spiritual life of First Baptist Church Crestwood needs to be discussed.

By the authority vested in us by a committee of members, we urge you not to disregard this request to meet.

Yours in Christ,

s/ James Turner
James Turner, Chairman,
Deacon Board

s/ Lewis M. Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church
Clerk

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr. Pastor
Office Telephone 545-3602

October 26,1984

The Reverend Theodore R. Little, Jr.
2413 Dunbarton Drive
Chesapeake, Virginia 23325

Dear Reverend Little:

Please permit this announcement to be read at both the 7:00 and the 11:30 A.M. services on Sunday, October 28, 1984, on Sunday, November 4, 1984, and again on Sunday, November 11, 1984.

NOTICE

A Called Meeting of the congregation of First Baptist Church Crestwood will be held on Friday, November 16, 1984 at First Baptist Church Crestwood. All members are strongly urged to be present as there are serious matters of church/pastor relationships to be considered. The meeting time is 8:00 P.M.

Sincerely,

s/ James Turner
James Turner, Chairman,
Deacon Board

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr. Pastor
Office Telephone 545-3602

November 1, 1984

A called Meeting of the congregation of First Baptist Church Crestwood will be held on Friday, November 16, 1984, at First Baptist Church Crestwood. You and all members of your family are urged to be present as there are several matters of church/pastor relationships to be considered. The meeting time is 8:00 P.M.

Yours in Christ,

James Turner
Chairman, Deacon Board

Lewis Warren
Vice Chairman, Trustee Board

George S. Wimbish
Church Clerk

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr. Pastor
Office Telephone 545-3602

November 7, 1984

Dear Member:

Several days ago you were sent a letter in which we strongly urged you to attend the meeting called for Friday, November 16, 1984, 8:00 P.M. at First Baptist Church Crestwood.

This letter is designed to let you know why we instead of the Pastor have called the meeting. On October 23, 1984, we, the Deacons and Trustees, asked for a conference with the Pastor. He refused. On October 26, 1984, we made a formal request for a meeting through a letter to the Pastor. Up to this date, November 7, 1984, he has not responded. He has refused to call the meeting.

We, a Committee of Deacons, Trustees and lay members are very much concerned about the way in which the spiritual life of our church has fallen apart. We wish to meet to discuss some of the problems confronting us and to try to find solutions before First Baptist Church Crestwood ends up like New Calvary Baptist Church in Norfolk. One of the ways of finding solutions begins as the Bible instructs, "Come, let us reason together".

Please, we urge you to be present.

s/ James Turner
James Turner, Chairman,
Deacon Board

s/ Lewis Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church
Clerk

First Baptist Church, Crestwood

4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

Theodore R. Little, Jr., Pastor
Office Telephone 545-3602

November 11, 1984

Dear Brothers and Sisters:

This letter is designed to assure you that the meeting called for Friday, November 16, 1984, 8:00 P.M., First Baptist Church Crestwood WILL BE HELD AS PLANNED. PLEASE DISREGARD ALL RUMORS AND STATEMENTS THAT SAY SOMETHING DIFFERENT. We explained to you in our letter of last week that Rev. Little REFUSED to call the meeting. That is why we were forced to call it. Sisters and Brothers, this is not an easy situation. We are deeply troubled because First Baptist Church Crestwood is in serious trouble. We need to meet to discuss and try to resolve problems confronting the Church. We, you and I, must not allow this church to fall into the kind of situation found as New Calvary. We owe this to God, to our children and to ourselves.

We have followed the teaching of the Bible which says "If you have ought with your brother, go to him". We have gone to Rev. Little individually, in groups, and as members of boards to talk about our concerns for the church. We have requested other ministers to

talk to him on our behalf. None of these efforts has done any good. Rev. Little will not hear us. Deacons and Trustees sought to meet to discuss problems confronting the church. Rev. Little stood in the door of the church and would not allow them to go into the church to meet. Deacons and Trustees have requested him to call a meeting of the congregation to discuss and resolve problems confronting the church. He refused. When members rise in Conference to address problems confronting the church, Rev. Little immediately calls the persons out of order. If they insist on talking, he adjourns the meeting while members are still talking.

Please, we urge you to attend the meeting so that we may be able to avoid becoming the next New Calvary!

Yours in Christ,

s/ James Turner
James Turner, Chairman,
Trustee Board

s/ Lewis Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church
Clerk

First Baptist Church, Crestwood

4709 Bainbridge Boulevard
Chesapeake, VA 23320

Office Telephone 546-3602

November 17, 1984

The Reverend Theodore R. Little, Jr.
2413 Dunbarton Drive
Chesapeake, VA 23335

Dear Reverend Little:

We regret you did not attend the meeting held on November 16, 1984. Four (4) letters were sent beckoning your attendance but you chose not to be present. Nevertheless, it is our duty to inform you of the results of actions taken at that meeting.

The members in attendance at the Congregational Meeting of First Baptist Church Crestwood voted after long and painful deliberation to terminate your services as Pastor of First Baptist Church Crestwood, effective immediately.

The congregation also agreed and voted to pay your salary for 90 days according to the terms of our contract.

Please notify, at your earliest convenience, the chairman of the Deacon and

Trustee Boards respectively to indicate when you would like to collect your personal effects.

God's blessings be with you and your family.

Yours in Christ,

s/ James Turner
James Turner, Chairman,
Deacon Board

s/ Lewis Warren
Lewis Warren, Vice Chairman,
Trustee Board

s/ George Wimbish
George Wimbish, Church Clerk

First Baptist Church, Crestwood
4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

November 27, 1984

Dear Brothers and Sisters:

This letter is to let you know where we are with our problems with Reverend Little, our former pastor and to request that you be present at a meeting being called for Friday night, November 30, 1984 at 8:00 P.M. First Baptist Church Crestwood.

The members of your committee followed the wishes of those who came to the meeting on November 16, 1984 and voted to terminate the services of Reverend Little as pastor of first Baptist Church Crestwood. On the very next day, a letter was written to Reverend Little telling him of our vote to terminate his services, effective immediately. A delegation of Deacons and Trustees delivered the letter to Reverend Little at his home. At that time, the Brothers urged Reverend Little not to occupy the pulpit of First Baptist Church Crestwood again.

To be absolutely sure that Reverend Little fully understood their urging, the Brothers went to the Church at 6:30 A.M. on November 18, 1984 so as make their statement to him again. Reverend Little came and brushed by the Brothers in total disregard.

As you might know, Reverend still will not honor and respect the wishes of the Congregants who voted by a margin of 10-1 to terminate his

services at a duly called meeting on November 16, 1984. He has continued to come to every service and "preach" as if he has received no letter of dismissal/termination.

We feel we MUST take other steps to protect our religious freedom and we do so reluctantly. We must take legal steps to get Reverend Little to terminate his services which are no longer desired by us because of his refusal to abide by terms of his contract with us as relates to our freedom and rights in the Church.

Because of the need to take legal action and because you need to have some feedback as to what is likely to occur, we are calling a meeting for Friday November 30, 1984 at 8:00 P.M.

Please, we urge you to be present. Continue to pray that God will continue to guide us in all things.

Yours in Christ,

s/ James Turner
James Turner, Chairman of Deacons

s / Lewis Warren
Lewis Warren, Vice-Chairman of Trustees

s/ George Wimbish
George Wimbish, Church Clerk

First Baptist Church, Crestwood
4701 Bainbridge Boulevard
Chesapeake, Virginia 23320

November 27, 1984

The Reverend Theodore Little. Jr.
2413 Dunbarton Drive
Chesapeake, Virginia 23325

Dear Reverend Little:

As indicated to you in our letter of November 17, 1984, in a duly called meeting of the Congregation of First Baptist Church Crestwood held on November 16, 1984, your services as Pastor were terminated because of our inability to get you to live up to the terms of your contract with the Church. This letter is to inform you that we cannot continue to allow you to totally disregard our wishes in this matter by continuing to occupy the pulpit against the wishes of the congregation by a vote of 10 to 1.

As unpleasant as it might be, we will have no alternative but to have you arrested for trespassing of if you persist in violating us by occupying the Pulpit.

Yours in Christ,

s/ James Turner
James Turner, Chairman of the
Deacon Board

1h

s/ Lewis Warren
Lewis Warren, Vice-Chairman
Trustees

s/ George S. Wimbish
George S. Wimbish, Church
Clerk

CERTIFICATE

In accordance with Rule 21 of the Rules of the Supreme Court of the United States, I hereby certify that I have this 1st day of March, 1986 mailed the required copies of the Brief In Opposition to the Petition for Certiorari to the Clerk's Office of the Supreme Court of the United States, and have also mailed the required copies of the above mentioned documents to all attorneys of record as follows:

Michael S. Weisberg
Weisberg and Stein, P.C.
Post Office Box 3647
Norfolk, VA 23514

Steven K. Whitaker

Whitaker, McCormack & Sargent
1200 Sparrow Road
Chesapeake, VA 23325

Stanley E. Sacks

Sacks & Sacks
Main and Bank Streets
P.O. Box 3291
Norfolk, VA 23514

Taken, subscribed and sworn to before me this

17th day of March, 1986.

My commission expires:

4/17/88.

Notary Public

SUPREME COURT OF THE UNITED STATES

THEODORE R. LITTLE, JR. *v.* FIRST BAPTIST CHURCH, CRESTWOOD

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF VIRGINIA, CITY OF CHESAPEAKE

No. 85-1435. Decided April 28, 1986

The petition for a writ of certiorari is denied.

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

In this case a state court conducted an election to determine whether petitioner, who was previously elected pastor of the First Baptist Church, Crestwood (Church), is still entitled to serve as pastor. I believe that such an action threatens to erode the First Amendment's prohibitions against entanglement between religious and secular authority, and I would therefore grant the petition for certiorari.

I

In December 1982 petitioner was elected pastor of the Church. The Church is congregational or self-governing, as opposed to associational or hierarchical, which refers to churches that are part of and governed by a larger organization. See generally *Watson* v. *James*, 80 U. S. (13 Wall.) 679, 722-728 (1872). During 1984 petitioner and certain members of the Church became involved in a dispute. Respondents, individual members of the Church, then filed this action for an injunction, claiming to act on behalf of the Church. Respondents alleged that at a duly-held meeting of the congregation, a majority had voted to terminate petitioner's employment. Petitioner's answer disputed respondents' authority to initiate the action on behalf of the Church.

The trial court, based only on the pleadings, temporarily enjoined petitioner from entering the Church premises and appointed a commissioner to hold an election of the congregation. After the commissioner had held the election and certi-

fied to the court that a majority had voted to fire petitioner, the court permanently enjoined petitioner from entering Church property or interfering in Church affairs.

II

Because religious organizations may own property and enter into contracts, it is inevitable that they will become involved in legal disputes. However, where the use of property or the terms of contracts necessitate reference to ecclesiastical principles or authority, courts must exercise extreme care to avoid taking sides on matters of religious belief. This Court set down the basic framework for such situations over 100 years ago, in *Watson, supra.* Although it has undergone some refinements, see, *e. g.*, *Jones* v. *Wolf*, 443 U. S. 595 (1979), the *Watson* approach is simple. A court may apply neutral principles of secular law to the dispute at hand. When that process requires a court to determine the validity of a church decision, the court ordinarily must discern from the relevant canonical law what body is authorized to make a particular decision within the church, and what decision that body has reached. Having done so, the court may not inquire whether the decision was made arbitrarily or whether it conflicts with the ecclesiastical precepts of the organization. *Serbian Eastern Orthodox Diocese* v. *Milivojevich*, 426 U. S. 696 (1976); *Maryland & Virginia Eldership* v. *Church of God at Sharpsburg*, 396 U. S. 367, 368 (1970) (BRENNAN, J., concurring).

In the present case the trial court clearly did not follow this method; indeed it imposed its own view of proper procedures on the congregation's decisionmaking. The court took respondents' word that they represented the Church without any evidence, although petitioner contested the fact. The court made no inquiry into whether the alleged meeting at which petitioner was fired actually took place, whether a quorum was present, or how the members voted. Lacking any

evidence that the authorized decisionmaker had acted, the court induced a decision on its own initiative.

This participation in the decisionmaking of an ecclesiastical body is both dangerous and unwarranted. Courts have no business "helping" a religious organization to make its wishes known. The court in this case should have limited its inquiry to the terms of petitioner's employment contract and to whether the Church had taken the actions requisite to terminating that contract. If the authorized body had indeed terminated petitioner's employment, then the court could validly have taken steps to enforce the Church's right to keep petitioner off Church property. Until respondents, who bore the burden of proof, demonstrated that such termination had taken place, the court's only proper response was to do nothing. Because the trial court instead plunged directly into the dispute, heedless of the severe risk of entanglement in religious affairs, I dissent from this Court's denial of certiorari.